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09/925,588	08/09/2001	Thomas J. Hebda		3003

7590 11/24/2003  
Robert L. Marsh  
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EXAMINER

STRIMBU, GREGORY J

ART UNIT PAPER NUMBER

3634

DATE MAILED: 11/24/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/925,588

Applicant(s)

HEBDA, THOMAS J.

Examiner

Gregory J. Strimbu

Art Unit

3634

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 02 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) 8-10 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4+6.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

### ***Election/Restrictions***

Applicant's election without traverse of the invention of group I in Paper No. 7 is acknowledged. Accordingly, claims 8-10 have been withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 7.

### ***Specification***

Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

The abstract of the disclosure is objected to because lines 1-3 do not assist readers in deciding whether there is a need for consulting the full patent text for details since they only recite the prior art. Additionally, "is provided" on line 3 can be easily implied and therefore should be deleted. Finally, it is suggested that the applicant amend the abstract to set forth the timing of the operation of the door operator, the assist and the latch operator. Correction is required. See MPEP § 608.01(b).

The disclosure is objected to because of the following informalities: the status of the parent application, serial number 09/362,248 needs to be updated on line 2 of page 1.

Appropriate correction is required.

The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed. It is suggested that the applicant amend the title to include the door operator, the latch operator and the assist.

### ***Claim Objections***

Claim 2 is objected to because it includes a period at the end of line 2.

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

Claims 1-7 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Recitations such as "a motor for rotating said handle and retracting said latch bolt" on line 13 of claim 1 render the claims indefinite because it is unclear whether or not the applicant is invoking 35 USC 112 paragraph 6. The recitation "unlatching means . . . said closed position" on lines 10-11 of claim 1 implies that the applicant is invoking 35 USC 112 paragraph 6. However, the positive recitation of the structure which performs the function set forth on lines 10-11 of claim 1, i.e., the motor, implies

Art Unit: 3634

that the applicant is not invoking 35 USC 112 paragraph 6. Clarification is requested. Recitations such as "[t]he combination" on line 1 of claim 3 lack antecedent basis. It is suggested that the applicant amend line 1 of claim 3 to recite --A combination comprising-- or --In combination-- to avoid confusion. Recitations such as "said bolt" on line 7 of claim 4 render the claims indefinite because they lack antecedent basis. Recitations such as "for moving said door closed position to said ajar position" on line 10 of claim 6 render the claims indefinite because it is unclear what the applicant is attempting to set forth.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 and 2 are rejected under 35 U.S.C. 102(b) as being anticipated by Rohroff. Rohroff discloses a door operating device comprising a linkage having a first connector 70 attachable to the door 12, a second connector 48 attachable to the wall 14, and having a power driven moveable means 32, the moveable means moveable in a first direction to move the door from the closed position to the open position, unlatching means for unlatching the door while the door is in the closed position, the unlatching means attachable to the door and the rotatable handle 20 and having a motor 98 for retracting the latch bolt, a start means 94 for generating a signal to start a

Art Unit: 3634

door opening sequence, and control means 82, 88 and 90 responsive to the signal from the start means for commencing the operation of the unlatching means and for commencing movement of the moveable means in the first direction wherein the door will be unlatched and moved to the open position.

Claims 3 and 4 are rejected under 35 U.S.C. 102(b) as being anticipated by Strab. Strab discloses a door 17 in an opening in a wall 18, the door moveable between an open position and a closed position and having an ajar position between the open position and the closed position, a door operating device 30 for moving the door between the ajar position and the open position, an assist 16 for moving the door between the closed position and the ajar position and means 15 for coordinating the operations of the door operating device and the assist, wherein the assist wherein the assist will move the door from the closed position to the ajar position and the door operating device will move the door from the ajar position to the open position after the door reaches the ajar position. It should be noted that the applicant has not recited that only the assist moves the door from the closed position to the ajar position. Therefore, Strab anticipates the claimed invention since both the door operator and the assist move the door from the closed position to the ajar position and the door operator then move the door from the ajar position to the open position, a latch 58, a rotatable handle (not numbered, but seen in figure 1), an unlatching means 50 having a motor 52.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 5-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Strab in view of Schoelkopf. Schoelkopf discloses an assist moveable in a first direction for moving a door from an ajar position to a closed position and moveable in a second direction for moving the door from the closed position to the ajar position.

It would have been obvious to one of ordinary skill in the art to provide Strab with an assist, as taught by Schoelkopf, to more securely hold the door in the closed position.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Dabideen, Lewis et al., Dunn, Kowalczyk, Eccleston '346 and '654 and Hubbell are cited for disclosing a door operating device and an assist or latch. Rowntree and Dorsey are cited for disclosing a door operating device interrelated with rotation of a door handle.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory J. Strimbu whose telephone number is 703-

Art Unit: 3634

305-3979. The examiner can normally be reached on Monday through Friday 8:00 to 4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P. Stodola can be reached on 703-308-2686. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-2168.

A handwritten signature in black ink, reading "Gregory J. Strimbu". The signature is written in a cursive style with a long horizontal flourish extending to the right.

Gregory J. Strimbu  
Primary Examiner  
Art Unit 3634  
November 14, 2003